REMARKS

Claims 1, 6, 14, 34, 39 are rejected by the Examiner under 35 U.S.C. § 103 (a) as being unpatentable over Mann (US 5,167,035) in view of Takama (US 5,572,518). This rejection is respectfully traversed.

On page 2 of the office action the Examiner states that Mann does not disclose expressly identifying reason information relating to at least one reason for generating a first control message; nor does Mann disclose generating a first control message, wherein the first control message includes explicit reason information relating to the identified at least one reason for generating the control message. The examiner further states on pages 2-3 of the office action that Takama teaches a reason indication parameter added to control messages, and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to include reason information in the control messages of Mann because it is well known in the art to send multiple pieces of data associated with control messages over a network. This assertion is respectfully traversed for several reasons.

First, there is no teaching or suggestion in either Mann or Takama which suggests the motivation for combining such references as asserted by the Examiner, namely to send multiple pieces of data associated with control messages over a network. Such motivation to modify the prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. In re Fine, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification."). In the present case, the Examiner asserts that the motivation for combining Mann and Takama is to send multiple pieces of data associated with control messages over a network. Not only is there no teaching or suggestion in Mann or Takama for such a motivation, but it is respectfully submitted that such motivation is so broad and non-specific that it could be used to justify the combination of any desired references relating to communication between nodes in a data network. Accordingly, it is believed that such motivation represents impermissible hindsight reconstruction on the part of the Examiner in justifying the combination of Mann and Takama.

Second, Applicant respectfully disagrees with the Examiner's assertion that it is well known in the art to send multiple pieces of data associated with control messages over a network.

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More specifically, although it may be possible to send multiple pieces of data associated with a control message over a data network, such a technique may be considered by one having ordinary skill in the art to be undesirable, particularly in situations where it is desirable to reduce the amount of overhead, bandwidth and/or other resources which are used to generate and transmit such control messages. For example, as described on pages 1-2 of the present application, an example of one type of control message contemplated by the technique of the present invention relates to Phase 1 type security association messages (such as, for example, keep-alive messages and heartbeat messages) which may be transmitted at periodic intervals between nodes in a data network. For such messages, conventional wisdom has heretofore suggested the desirability of reducing or minimizing the data included in such messages in order to minimize or reduce their associated byte size, and to thereby minimize or reduce the amount of bandwidth needed or consumed for transmitting such messages. Accordingly, Applicant traverses the assertion by the Examiner on page 3 of the office action that it is well known in the art to send multiple pieces of data associated with control messages over a network, as well as the implied assertion that one having ordinary skill in the art would consider it desirable to send multiple pieces of data associated with control messages over a network. Should the Examiner continue to maintain this assertion, Applicant respectfully requests the Examiner to provide a reference, in accordance with the MPEP Section 2144.03, which explicitly provides support for the assertion that one having ordinary skill in the art would consider it desirable to send multiple pieces of data associated with control messages over a data network.

Third, it is submitted that the Examiner has improperly combined the teachings of Mann and Takama because Takama represents non-analogous art. The MPEP Section 2141.01(a) states that in order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. Additionally, while Patent Office classification of references and the cross-references in the official search notes are some evidence of "non-analogy" or "analogy" respectively, the court [the Federal Circuit] has found "the similarities and differences in structure and function of the inventions to carry far greater weight."

In the present case, at least one aspect of the present claimed invention is directed to a technique for communicating between nodes in a data network. However, as stated by the Examiner on page 6 of the office action, Takama does not expressly disclose communicating between nodes and a data network. Moreover, as stated in the Abstract and Summary Of The Invention of Takama, a primary object of Takama is to offer a technology which more

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effectively executes a band setting process relating to a call set-up process for B-ISDN communication technology. In contrast, as stated, for example, on page 5 of the present application, one objective of the present invention is to improve upon security communication protocols implemented in IP networks. Since the teachings of Takama relate generally to call setup procedures for B-ISDN communication technology, and since Takama does not expressly disclose communicating between nodes and a data network, it is submitted that one having ordinary skill and the art would not consider the teachings of Takama to be reasonably pertinent to the problem of improving security communication protocols implemented in IP networks. Accordingly, it is submitted that Takama represents non-analogous art, and that that any rejections of the currently pending claims based upon Takama have been improperly rejected.

Claims 7, 12-13, 19, 24-26, 31-33, 40, 45 are rejected by the Examiner under 35 U.S.C. § 103 (a) as being unpatentable over Takama (US 5,572,518) in view of Mann (US 5,167,035). This rejection is respectfully traversed.

On page 6 of the office action the Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the method of Takama for communicating between nodes in a data network (as taught in Mann) because it is well known in the art to send control messages over a data network. This assertion is respectfully traversed for several reasons.

First, as stated previously, it is submitted that Takama represents non-analogous art, and that that any rejections of the currently pending claims based upon Takama have been improperly rejected.

Second, as stated by the Examiner on page 6 of the office action, Takama does not expressly disclose communicating between nodes in a data network. Thus, the Examiner's suggested motivation for combining the teachings of Takama and Mann are not supported by the teachings of Takama. Not only is there no teaching in Takama for such a motivation, but it is respectfully submitted that such motivation is so broad and non-specific that it could be used to justify the combination of any desired references relating to communication between nodes in a data network. Accordingly, it is believed that such motivation represents impermissible hindsight reconstruction on the part of the Examiner in justifying the combination of Takama and Mann.

Third, even if one were to combine the teachings of Takama and Mann in the manner suggested by the Examiner on page 6 of the office action, the resulting invention would not realize the at least some of the benefits, features, and/or advantages realized by the present claimed invention. For example, if one skilled in the art were to modify the invention of Takama to be able to transmit Takama's "release complete" (REL COM) call control messages between

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nodes of a network, such modified call control messages would still be limited for use in call set-up processes for B-ISDN communication technology, and would not be usable for improving security communication protocols implemented in IP networks.

Additionally, as stated previously, although it may be possible to send multiple pieces of data associated with a control message over a data network, such a technique may be considered by one having ordinary skill in the art to be undesirable, particularly in situations where it is desirable to reduce the amount of overhead, bandwidth and/or other resources which are used to generate and transmit such control messages. For example, as described on pages 1-2 of the present application, an example of one type of control message contemplated by the technique of the present invention relates to Phase 1 type security association messages (such as, for example, keep-alive messages and heartbeat messages) which may be transmitted at periodic intervals between nodes in a data network. For such messages, conventional wisdom has heretofore suggested the desirability of reducing or minimizing the data included in such messages in order to minimize or reduce their associated byte size, and to thereby minimize or reduce the amount of bandwidth needed or consumed for transmitting such messages.

Claims 2-4, 8-10, 15-17, 20-22, 27-29, 35-37, 41-43 are rejected by the Examiner under 35 U.S.C. §103 as being unpatentable over Mann and Takama, and further in view of Troxel (US Pat. Pub. No. 2002/0075807). This rejection is respectfully traversed.

On pages 12-13 of the office action the Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use standardized security protocols (e.g., IKE, IP Security, ISAKMP) to send messages between nodes in a communications network because it is well known in the art to send messages according to such security protocols. This assertion is respectfully traversed for several reasons.

First, as stated previously, it is submitted that Takama represents non-analogous art, and that that any rejections of the currently pending claims based upon Takama have been improperly rejected.

Second, as stated by the Examiner on page 12 of the office action, the combination of the teachings of Mann and Takama do not expressly disclose the use of standardized security protocols. Thus, the Examiner's suggested motivation for combining the teachings of Takama and Mann are not supported by the teachings of Takama or Mann. Not only is there no teaching in Takama for such a motivation, but it is respectfully submitted that such motivation is so broad and non-specific that it could be used to justify the combination of any desired references relating to communication between nodes in a data network. Accordingly, it is believed that such

motivation represents impermissible hindsight reconstruction on the part of the Examiner in justifying the combination of Takama, Mann and Troxel.

Third, even if one were to combine the teachings of Takama, Mann and Troxel in the manner suggested by the Examiner on page 6 of the office action, the resulting invention would not realize the at least some of the benefits, features, and/or advantages realized by the present claimed invention. For example, if one skilled in the art were to modify the invention of Takama to be able to transmit Takama's "release complete" (REL COM) call control messages between nodes of a network using a standardized security protocol, such modified call control messages would still be limited for use in call set-up processes for B-ISDN communication technology, and would not be usable for improving security communication protocols implemented in IP networks. For example, there is no teaching or suggestion in any of the prior art references for preventing a network node from attempting to renegotiate a terminated Phase 1 security association (SA) while its associated Phase 2 SA is still active. However, as described, for example, on page 7 of the present application, the control messages of the present claimed invention may be used to preventing a network node from attempting to renegotiate a terminated Phase 1 security association (SA) while its associated Phase 2 SA is still active.
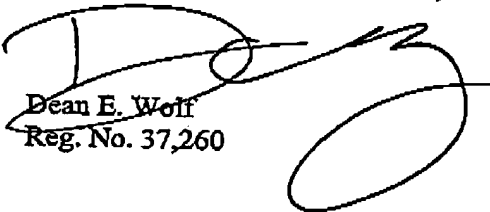
Claims 5, 11, 18, 23, 30, 38, and 44 are rejected by the Examiner under 35 U.S.C. §103 as being unpatentable over Mann and Takama, and further in view of Lueng (US 6,760,444). This rejection is respectfully traversed.

According to 35 U.S.C. § 103(c), subject matter developed by another person which qualifies as prior under art under § 102(e), shall not preclude patentability under § 103 where the subject matter and the claimed invention were, at the time of the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Because the present application was filed after November 29, 2000, prosecution of the present application is subject to the provisions of 35 U.S.C. § 103(c). Moreover, it is noted that both the present application and the Lueng reference were commonly assigned to Cisco Technology, Inc., at the time invention was made. Accordingly, it is requested that the Examiner withdraw the finality of the June 10, 2005 Office Action since at least a portion of the claims have been improperly rejected.

Because claims 1-45 are believed to be allowable in their present form, many of the examiner's rejections in the Office Action have not been addressed in this response. However, applicant respectfully reserves the right to respond to one or more of the examiner's rejections in subsequent amendments should conditions arise warranting such responses.

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It is noted that the undersigned attorney's efforts to obtain a telephonic interview with the examiner (in order to discuss at least a portion of the above-referenced issues) have been rejected by the examiner. Accordingly, because the shortened three-month statutory period for filing an RCE for this application is due on September 10, 2005, after the examiner has had a chance to consider the arguments presented in this response, Applicant respectfully requests the examiner to telephone the undersigned attorney in order to expedite prosecution of this case, and to timely advise the undersigned attorney as to how the examiner will or intends to respond to the traversals set forth in this response.

Respectfully submitted,
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